

Assembly Bill No. 2701

CHAPTER 644

An act to amend Sections 13144 and 13152 of, and to repeal Section 12847.5 of, the Food and Agricultural Code, to amend Sections 9795, 12812.2, and 12812.5 of the Government Code, to amend Sections 901, 25178, 25244.11, 25295, 25299.81, 25395.32, 39604, 39607.5, 39619.5, 41712, 41865, 43101, 44011.6, 44100, 44104.5, 57007, and 115910 of, and to repeal Sections 39702.5, 43032, and 59019 of, the Health and Safety Code, to amend Section 14315 of the Penal Code, to amend Sections 42885.5 and 42889.4 of, to add Chapter 4 (commencing with Section 71069) to Part 2 of Division 34 of, and to repeal Section 42889.1 of, the Public Resources Code, to amend Sections 7672, 7711 and 7712 of the Public Utilities Code, to amend Sections 13191, 13292, 13369, and 13385 of, and to repeal Sections 10782, 13192, 13198, and 13399.39 of, the Water Code, and to amend Section 4 of Chapter 435 of the Statutes of 1994, relating to environmental protection.

[Approved by Governor September 21, 2004. Filed
with Secretary of State September 21, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, Runner. Environmental protection: reports.

(1) Existing law requires the California Environmental Protection Agency, and its boards, departments, and offices to prepare and submit to the Governor and the Legislature various reports containing specified information on the implementation and effectiveness of certain programs, policies, and projects to ensure the protection of natural resources in the state.

This bill would require the California Integrated Waste Management Board, in consultation with state agencies that are affected by the changes made by the bill, to develop and implement guidelines, by January 1, 2005, to provide and produce reports and other documentation, including guidance documents, fact sheets, and other publications and written materials, in the most efficient and environmentally sustainable manner possible. The bill would require the guidelines to include the distribution of reports and other documentation by electronic means and compact discs, information on posting reports and other documentation on state agency Web sites, and techniques for the production of reports and other documentation that will reduce and encourage the use of recycled goods, materials, and supplies, specified

cost reduction options, and the distribution of a reasonable number of printed reports to ensure public access.

The bill would require the board, before February 1, 2005, to distribute the guidelines to all state agencies.

The bill would require the agency and its boards, departments, and offices, on and after February 1, 2005, to provide and produce reports and other documentation pursuant to these guidelines, and would require all state agencies, after June 1, 2005, to provide and produce reports and other documentation pursuant to these guidelines.

The bill would require each state agency, by April 30, 2005, to conduct a thorough review of each report that the state agency is required to submit to the Legislature and identify whether the report is a completed one-time report, an obsolete report, or a duplicative report that can be eliminated or modified.

The bill would revise and eliminate various existing reporting requirements for the agency and other state agencies.

(2) Existing law requires the Public Utilities Commission to adopt regulations by January 1, 1993, to reduce potential railroad hazards, including regulations concerning the transportation of hazardous or potentially hazardous commodities.

This bill would repeal the requirement that the commission adopt the regulations concerning the transportation of those hazardous commodities.

The people of the State of California do enact as follows:

SECTION 1. Section 12847.5 of the Food and Agricultural Code is repealed.

SEC. 2. Section 13144 of the Food and Agricultural Code is amended to read:

13144. (a) The department shall establish specific numerical values for water solubility, soil adsorption coefficient (Koc), hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. The values established by the department shall be at least equal to those established by the Environmental Protection Agency. The department shall revise the numerical values when the department finds that the revision is necessary to protect the groundwater of the state. The numerical values established or revised by the department shall always be at least as stringent as the values being used by the Environmental Protection Agency at the time the values are established or revised by the department.

(b) On or before December 31, 2004, and updated at least annually thereafter, the director shall post the following information on the



department's Web site for each pesticide registered for agricultural use and during years that specific numerical values are revised:

(1) A list of each active ingredient, other specified ingredient, or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.

(2) A list of each pesticide that contains an active ingredient, other specified ingredients, or degradation product of an active ingredient that is greater than one or more of the numerical values established pursuant to subdivision (a), or is less than the numerical value in the case of soil adsorption coefficient, in both of the following categories:

(A) Water solubility or soil adsorption coefficient (Koc).

(B) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism, or field dissipation.

(3) For each pesticide listed pursuant to paragraph (2) for which information is available, a list of the amount sold in California during the most recent year for which sales information is available and where and for what purpose the pesticide was used, when this information is available in the pesticide use report.

(c) The department shall determine, to the extent possible, the toxicological significance of the degradation products and other specified ingredients identified pursuant to paragraph (2) of subdivision (b).

SEC. 3. Section 13152 of the Food and Agricultural Code is amended to read:

13152. (a) The department shall conduct ongoing soil and groundwater monitoring of any pesticide whose continued use is permitted pursuant to paragraph (3) of subdivision (d) of Section 13150.

(b) Any pesticide monitored pursuant to this section that is determined, by review of monitoring data and any other relevant data, to pollute the groundwaters of the state two years after the director takes action pursuant to paragraph (3) of subdivision (d) of Section 13150 shall be canceled unless the director has determined that the adverse health effects of the pesticide are not carcinogenic, mutagenic, teratogenic, or neurotoxic.

(c) The department shall maintain a statewide database of wells sampled for pesticide active ingredients. All agencies shall submit to the department, in a timely manner, the results of any well sampling for pesticide active ingredients and the results of any well sampling that detect any pesticide active ingredients.

(d) Not later than June 30, 1986, the director, the State Department of Health Services, and the board shall jointly establish minimum requirements for well sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct

well sampling. All well sampling conducted after December 1, 1986, shall meet the minimum requirements established pursuant to this subdivision.

(e) The department shall post the following information on its Web site, updated no later than December 1 of each year:

(1) The number of wells sampled for pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(2) The number of well samples with detectable levels of pesticide active ingredients, the location of the wells from which the samples were taken, the well numbers, if available, and the agencies responsible for drawing and analyzing the samples.

(3) An analysis of the results of well sampling described in paragraphs (1) and (2), to determine the probable source of the residues. The analysis shall consider factors such as the physical and chemical characteristics of the pesticide, volume of use and method of application of the pesticide, irrigation practices related to use of the pesticide, and types of soil in areas where the pesticide is applied.

(4) Actions taken by the director and the board to prevent pesticides from migrating to groundwaters of the state.

SEC. 4. Section 9795 of the Government Code is amended to read:

9795. (a) (1) Any report required or requested by law to be submitted by a state or local agency to the members of either house of the Legislature generally, shall instead be submitted to the Legislative Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly. Each report shall include a summary of its contents, not to exceed one page in length, a copy of which shall be provided to each member of the appropriate house or houses of the Legislature by the Legislative Counsel within two working days of its receipt. Notice of receipt of the report shall also be recorded in the journal of the appropriate house or houses of the Legislature by the secretary or clerk of that house.

(2) In addition to and as part of the information made available to the public in electronic form pursuant to Section 10248, the Legislative Counsel shall make available a list of the reports submitted by state and local agencies, as specified in paragraph (1). If the Legislative Counsel receives a request from a member of the public for a report contained in the list, the Legislative Counsel is not required to provide a copy of the report and may refer the requester to the state or local agency, as the case may be, that authored the report.

(b) (1) A local agency shall be deemed to have complied with paragraph (1) of subdivision (a) if the agency submits to the Legislative



Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly each one hard copy of the report required or requested.

(2) A state agency shall be deemed to have complied with paragraph (1) of subdivision (a) if the agency submits to the Legislative Counsel, the Secretary of the Senate, and the Chief Clerk of the Assembly each one hard copy and one electronic copy of the report required or requested.

(c) This section shall not apply to reports required or requested by law to be directed to a committee or other specified entity within the Legislature.

(d) No report shall be distributed to a Member of the Legislature unless specifically requested by that member.

(e) Compliance with subdivision (a) shall be deemed to be full compliance with subdivision (c) of Section 10242.5.

(f) A state agency report and summary subject to this section shall include an Internet Web site where the report can be downloaded and telephone number to call to order a hard copy of the report. A report submitted by a state agency subject to this section shall also be posted at the agency's Internet Web site.

(g) For purposes of this section, "report" includes any study or audit.

SEC. 5. Section 12812.2 of the Government Code is amended to read:

12812.2. (a) One of the deputies to the Secretary for Environmental Protection shall be a deputy secretary for law enforcement and counsel, who, subject to the direction and supervision of the secretary, shall have the responsibility and authority to do all of the following:

(1) Develop a program to ensure that the boards, departments, offices, and other agencies that implement laws or regulations within the jurisdiction of the California Environmental Protection Agency take consistent, effective, and coordinated compliance and enforcement actions to protect public health and the environment. The program shall include training and cross-training of inspection and enforcement personnel of those boards, departments, offices, or other agencies to ensure consistent, effective, and coordinated enforcement.

(2) In consultation with the Attorney General, establish a cross-media enforcement unit to assist a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency, to investigate and prepare matters for enforcement action in order to protect public health and the environment. The unit may inspect and investigate a violation of a law or regulation within the jurisdiction of the board, department, office, or other agency, including a violation involving more than one environmental medium and a violation involving the jurisdiction of



more than one board, department, office, or agency. The unit shall exercise its authority consistent with the authority granted to the head of a department pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1.

(3) Refer a violation of a law or regulation within the jurisdiction of a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency to the Attorney General, a district attorney, or city attorney for the filing of a civil or criminal action.

(4) Exercise the authority granted pursuant to paragraph (3) only after providing notice to the board, department, office, or other agency unless the secretary determines that notice would compromise an investigation or enforcement action.

(b) Nothing in this section shall authorize the deputy secretary for law enforcement and counsel to duplicate, overlap, compromise, or otherwise interfere with an investigation or enforcement action undertaken by a board, department, office, or other agency that implements a law or regulation subject to the jurisdiction of the California Environmental Protection Agency.

(c) The Environmental Protection Agency shall post on its Web site, updated no later than December 1 of each year, the status of the implementation of this section.

SEC. 6. Section 12812.5 of the Government Code is amended to read:

12812.5. On or before March 1, 1994, the California Environmental Protection Agency, using existing resources and in consultation with other relevant agencies in state and local government, shall do all of the following:

(a) Establish an environmental technologies clearinghouse, which shall include, but not be limited to, maintaining information on California-based environmental technology companies and information on funding sources for environmental technology endeavors and making this information available to interested parties.

(b) Make available technical assistance within the California Environmental Protection Agency to assist California-based environmental technology companies to improve export opportunities, and to enhance foreign buyers' awareness of, and access to, environmental technologies and services offered by California-based companies. The technical assistance may include, but is not limited to, organizing and leading trade missions, receiving reverse trade missions, referral services, reviewing project opportunities, and notifying California-based companies of export opportunities and trade shows.



(c) Perform research studies and solicit technical advice to identify international market opportunities for California-based environmental technology companies.

(d) Participate in federally and other nonstate funded technical exchange programs, when appropriate, to increase foreign buyers' interest in California's environmental technologies.

(e) Coordinate activities in state government, and with the federal government and other countries' governments, to take advantage of trade promotion and financial assistance opportunities available to California-based environmental technology companies.

SEC. 7. Section 901 of the Health and Safety Code is amended to read:

901. (a) As used in this section:

(1) "Center" means the Children's Environmental Health Center established pursuant to Section 900.

(2) "Office" means the Office of Environmental Health Hazard Assessment.

(b) On or before June 30, 2001, the office shall review cancer risk assessment guidelines for use by the office and the other entities within the California Environmental Protection Agency to establish cancer potency values or numerical health guidance values that adequately address carcinogenic exposures to the fetus, infants, and children.

(c) The review required by subdivision (b) shall include a review of existing state and federal cancer risk guidelines, as well as new information on carcinogenesis, and shall consider the extent to which those guidelines address risks from exposures occurring early in life.

(d) The review required by subdivision (b) shall also include, but not be limited to, all of the following:

(1) The development of criteria for identifying carcinogens likely to have a greater impact if exposures occur early in life.

(2) The assessment of methodologies used in existing guidelines to address early-in-life exposures.

(3) The construction of a database of animal studies to evaluate increases in risks from short-term early-in-life exposures.

(e) On or before June 30, 2004, the office shall finalize and publish children's cancer guidelines that shall be protective of children's health. These guidelines shall be revised and updated as needed by the office.

(f) (1) On or before December 31, 2002, the office shall publish a guidance document, for use by the Department of Toxic Substances Control and other state and local environmental and public health agencies, to assess exposures and health risks at existing and proposed schoolsites. The guidance document shall include, but not be limited to, all of the following:



(A) Appropriate child-specific routes of exposure unique to the school environment, in addition to those in existing exposure assessment models.

(B) Appropriate available child-specific numerical health effects guidance values, and plans for the development of additional child-specific numerical health effects guidance values.

(C) The identification of uncertainties in the risk assessment guidance, and those actions that should be taken to address those uncertainties.

(2) The office shall consult with the Department of Toxic Substances Control and the State Department of Education in the preparation of the guidance document required by paragraph (1) to ensure that it provides the information necessary for these two agencies to meet the requirements of Sections 17210.1 and 17213.1 of the Education Code.

(g) On or before January 1, 2002, the office, in consultation with the appropriate entities within the California Environmental Protection Agency, shall identify those chemical contaminants commonly found at schoolsites and determined by the office to be of greatest concern based on criteria that identify child-specific exposures and child-specific physiological sensitivities. On or before December 31, 2002, and annually thereafter, the office shall publish and make available to the public and to other state and local environmental and public health agencies and school districts, numerical health guidance values for five of those chemical contaminants identified pursuant to this subdivision until the contaminants identified have been exhausted.

(h) On and after January 1, 2002, and biennially thereafter, the center shall report to the Legislature and the Governor on the implementation of this section as part of the report required by subdivision (d) of Section 900. The report shall include, but not be limited to, information on revisions or modifications made by the office and other entities within the California Environmental Protection Agency to cancer potency values and other numerical health guidance values in order to be protective of children's health. The report shall also describe the use of the revised health guidance values in the programs and activities of the office and the other boards and departments within the California Environmental Protection Agency.

(i) Nothing in this section relieves any entity within the California Environmental Protection Agency of complying with Chapter 3.5 (commencing with Section 11340) of Part 2 of Division 3 of Title 2 of the Government Code, to the extent that chapter is applicable to the entity on or before July 19, 2000, or January 1, 1998.

SEC. 8. Section 25178 of the Health and Safety Code is amended to read:



25178. On or before January 1 of each odd-numbered year, the department shall post on its Web site, at a minimum, all of the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b) (1) The status of the hazardous waste facilities permit program that shall include all of the following information:

(A) A description of the final hazardous waste facilities permit applications received.

(B) The number of final hazardous waste facilities permits issued to date.

(C) The number of final hazardous waste facilities permits yet to be issued.

(D) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

(2) For purposes of paragraph (1), “hazardous waste facility” means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A summary of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.

(k) Any other data considered pertinent by the department to hazardous waste management.

(l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

(m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County.

SEC. 9. Section 25244.11 of the Health and Safety Code is amended to read:

25244.11. The department shall, report to the Governor and the Legislature, including the Chairpersons of the Senate Committee on Appropriations, Assembly Committee on Ways and Means, Joint Legislative Budget Committee, and Assembly Committee on Economic Development and New Technologies, on the status, funding, and results of all demonstration and research projects awarded grants during a year when grant funds are made available.

This report shall include recommendations for legislation and shall identify those state and federal economic and financial incentives which can best accelerate and maximize the research, development, and demonstration of hazardous waste reduction, recycling, and treatment technologies.

SEC. 10. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment of the underground tank system shall be reported by the owner or operator to the local agency designated pursuant to Section 25283 within 24 hours after the release has been detected or should have been detected. A full written report shall be transmitted by the owner or operator of the underground tank system to the local agency within five working days of the occurrence of the release. The report shall describe the nature and volume of the unauthorized release, any corrective or remedial actions undertaken, and any further corrective or remedial actions, including investigative actions, which will be needed to clean up the unauthorized release and abate the effects of the release and a time schedule for implementing these actions.

(2) The local agency shall review the permit whenever there has been an unauthorized release or when it determines that the underground tank system is unsafe. In determining whether to modify or terminate the permit, the local agency shall consider the age of the tank, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the hazardous substances stored in the tank, the severity of potential unauthorized releases, and the suitability of any other long-term preventive measures which would meet the requirements of this chapter.

(b) The board shall continuously post and update on its Web site, but at a minimum, annually on or before December 1, a report of all unauthorized releases, indicating for each unauthorized release the responsible party, the site name, the hazardous substance, the quantity



of the unauthorized release if known, and the actions taken to abate the problem.

(c) The reporting requirements imposed by this section are in addition to any requirements which may be imposed by Sections 13271 and 13272 of the Water Code.

SEC. 11. Section 25299.81 of the Health and Safety Code is amended to read:

25299.81. (a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2011.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2011, due and payable to the board.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2010, or have become due before January 1, 2011, including any interest or penalties that accrue before, on, or after January 1, 2011, associated with those unpaid fees.

(d) The board shall continuously post and update on its Web site, but at a minimum, annually on or before September 30, information that describes the status of the fund and shall make recommendations, when appropriate, to improve the efficiency of the program.

SEC. 12. Section 25395.32 of the Health and Safety Code is amended to read:

25395.32. On or before January 10 of each year when a loan under this article is made or repaid during the previous fiscal year, the secretary shall report to the Joint Legislative Budget Committee and to the chairs of the appropriate policy committees of the Senate and the Assembly, and shall post on the Internet web site of the agency, all of the following:

(a) The number and dollar amount of loans approved pursuant to Section 25395.21, the number and dollar amount of those loans that have been repaid, and, the number and dollar amount of those loans that are in default.

(b) The number and dollar amount of loans waived pursuant to subdivision (f) of Section 25395.21.

(c) The number and dollar amount of loans approved pursuant to Section 25395.23, the number and dollar amount of those loans that have been repaid, and the number and dollar amount of those loans that are in default.

(d) The number of preliminary endangerment assessments completed pursuant to agreements entered into under this article.

(e) The number of sites where necessary response actions have been completed pursuant to agreements entered into under this article.

SEC. 13. Section 39604 of the Health and Safety Code is amended to read:

39604. (a) The state board shall post on its Web site, at a minimum by January 1 of each odd-numbered year, information on air quality conditions and trends statewide and on the status and effectiveness of state and local air quality programs.

(b) The data shall include, but not be limited to, all of the following:

(1) A review of air quality trends in each air basin over the most recent five-calendar-year period for which a complete data record is available.

(2) A statement of the number of violations of air quality standards that occurred in each air basin over the most recent two calendar years for which a complete data record is available, and a comparison of the number of violations to those in prior years.

(3) A listing of any changes in state ambient air quality standards adopted by the board over the previous two calendar years.

(4) A summary of the results of research projects concluded during the previous two years, the status of current research projects, and the conduct of the research program pursuant to Section 39703.

(5) A summary of any actions taken by the state board to assume the powers of districts under Section 39808.

(6) A summary of the effects of any significant federal actions over the previous two years that have affected state air quality or air quality programs.

(7) A summary of the status of the state implementation plan for achieving and maintaining ambient air quality standards.

(8) A summary of the state board's actions in the previous two calendar years to control toxic air pollutants pursuant to Chapter 3.5 (commencing with Section 39650).



(9) A summary of actions of the state board in controlling emissions from motor vehicles during the previous two-year period.

(10) A summary of significant actions taken by districts to control emissions from nonvehicular sources during the previous two-year period. This summary shall not include a district by district analysis for each district in the state, but shall include an overall analysis.

SEC. 14. Section 39607.5 of the Health and Safety Code is amended to read:

39607.5. (a) The state board shall develop, and adopt in a public hearing a methodology for use by districts to calculate the value of credits issued for emission reductions from stationary, mobile, indirect, and areawide sources, including those issued under market-based incentive programs, when those credits are used interchangeably.

(b) In developing the methodology, the state board shall do all of the following:

(1) Ensure that the methodology results in the maintenance and improvement of air quality consistent with this division.

(2) Allow those credits to be used in a market-based incentive program adopted pursuant to Section 39616 that requires annual reductions in emissions through declining annual allocations, and allow the use of all of those credits, including those from a market-based incentive program, to meet other stationary or mobile source requirements that do not expressly prohibit that use.

(3) Ensure that the methodology does not do any of the following:

(A) Result in the crediting of air emissions that already have been identified as emission reductions necessary to achieve state and federal ambient air quality standards.

(B) Provide for an additional discount of credits solely as a result of emission reduction credits trading if a district already has discounted the credit as part of its process of identifying and granting those credits to sources.

(C) Otherwise provide for double-counting emission reductions.

(4) Consult with, and consider the suggestions of, the public and all interested parties, including, but not limited to, the California Air Pollution Control Officers Association and all affected regulated entities.

(5) Ensure that any credits, whether they are derived from stationary, mobile, indirect, or areawide sources, shall be permanent, enforceable, quantifiable, and surplus.

(6) Ensure that any credits derived from a market-based incentive program adopted pursuant to Section 39616 are permanent, enforceable, quantifiable, and are in addition to any required controls, unless those credits otherwise comply with paragraph (2).



(7) Consider all of the following factors:

(A) How long credits should be valid.

(B) Whether, and which, banking opportunities may exist for credits.

(C) How to provide flexibility to sources seeking to use credits so that they remain interchangeable and negotiable until used.

(D) How to ensure a viable trading process for sources wishing to trade credits consistent with this section.

(E) How to ensure that, if credits may be used within and between adjacent districts or air basins where sources are in proximity to one another, the use occurs while maintaining and improving air quality in both districts or air basins.

(c) If necessary, the state board shall periodically update the methodology as it applies to future transactions.

(d) The state board shall periodically review each district's emission reduction and credit trading programs to ensure that the programs comply with the methodology developed pursuant to this section.

(e) The state board shall post on its Web site, at a minimum by January 1 each year, actions taken by the state board to implement this section.

SEC. 15. Section 39619.5 of the Health and Safety Code is amended to read:

39619.5. The state board shall develop and conduct an expanded and revised program of monitoring of airborne fine particles smaller than 2.5 microns in diameter (PM 2.5). The program shall be designed to accomplish all of the following:

(a) The monitoring method selected shall be capable of accurately representing the spectrum of compounds that comprise PM 2.5 in the atmosphere of regions where monitoring is conducted, including nitrates and other inorganic compounds, as well as carbonaceous materials.

(b) To the extent feasible, the state board shall consider approved federal particulate methods in selecting a monitoring method for the program.

(c) The monitoring network used in the program shall site monitors so as to characterize population exposure, background conditions, and transport influence, and attain any other objective identified by the state board as necessary to understand conditions and to provide information for the development of control strategies.

(d) Portable monitors shall be used in locations not now monitored for PM 10, but where elevated PM 2.5 might be expected.

(e) During the initial two years of expanded monitoring, PM 2.5 monitoring shall be done at one or more of the highest level PM 10 sites in any region that violates the federal ambient air quality standard for PM 10, to enable a determination of the correlation between levels of PM 10 and PM 2.5.



(f) In regions where ambient source characterization studies for PM 2.5 have not been completed, the state board shall work with the district to develop and conduct those studies.

(g) The state board shall place on its Web site, updated at a minimum January 1 of each year, the status and results of the airborne fine particulate air pollution monitoring program.

SEC. 16. Section 39702.5 of the Health and Safety Code is repealed.

SEC. 17. Section 41712 of the Health and Safety Code is amended to read:

41712. (a) For purposes of this section, the following terms have the following meaning:

(1) “Consumer product” means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

(2) “Health benefit product” means an antimicrobial product registered with the Environmental Protection Agency.

(3) “Maximum feasible reduction in volatile organic compounds emitted” means at least a 60-percent reduction in the emissions of volatile organic compounds resulting from the use of aerosol paints, calculated with respect to the 1989 baseline year, including acetone in that baseline year.

(4) “Medical expert” means a physician, including a pediatrician, a microbiologist, or a scientist involved in research related to infectious disease and infection control.

(b) The state board shall adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:

(1) The regulations are necessary to attain state and federal ambient air quality standards.

(2) The regulations are commercially and technologically feasible and necessary.

(c) A regulation shall not be adopted which requires the elimination of a product form.

(d) The state board shall not adopt regulations pursuant to subdivision (b) unless the regulations are technologically and commercially feasible, and necessary to carry out this division. The state board shall consider the effect that the regulations proposed for health benefit products will have on the efficacy of those products in killing or

inactivating agents of infectious diseases such as viruses, bacteria, and fungi, and the impact the regulations will have on the availability of health benefit products to California consumers.

(e) Prior to adopting regulations pursuant to this section governing health benefit products, the state board shall consider any recommendations received from federal, state, or local public health agencies and medical experts in the field of public health.

(f) A district shall adopt no regulation pertaining to disinfectants, nor any regulation pertaining to a consumer product that is different than any regulation adopted by the state board for that purpose.

(g) A consumer product manufactured prior to each effective date specified in regulations adopted by the state board pursuant to this section that applies to that consumer product may be sold, supplied, or offered for sale for a period of three years from the specified effective date if the date of manufacture or a representative date code is clearly displayed on the product at the point of sale. An explanation of the date code shall be filed with the state board.

(h) (1) It is the intent of the Legislature that, prior to January 1, 2000, air pollution control standards affecting the formulation of aerosol adhesives and limiting emissions of reactive organic compounds resulting from the use of aerosol adhesives be set solely by the state board to ensure uniform standards applicable on a statewide basis.

(2) The Legislature recognizes that the current state board volatile organic compound (VOC) limit for aerosol adhesives is 75 percent by weight. Effective January 1, 1997, the state board's 75-percent standard shall apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses, and any district regulations limiting the VOC content of, or emissions from, aerosol adhesives, are null and void. After that date, a district may adopt and enforce the state board's 75-percent standard for aerosol adhesives, or a subsequently adopted state board standard, in the same manner as a district regulation limiting the issuance of air contaminants.

(3) Notwithstanding any other provision of this section, on and after January 1, 2000, a district may adopt and enforce a regulation setting an emission standard or standards for VOC emissions for the use of aerosol adhesives that is more stringent than the standards adopted by the state board.

(i) (1) It is the intent of the Legislature that air pollution control standards affecting the formulation of aerosol paints and limiting the emissions of volatile organic compounds resulting from the use of aerosol paints be set solely by the state board to ensure uniform standards applicable on a statewide basis. A district shall not adopt or enforce any regulation regarding the volatile organic compound content of, or



emissions from, aerosol paints until the state board has adopted a regulation regarding those paints, and any district regulation shall not be different than the state board regulation. A district may observe and enforce a state board regulation regarding aerosol paints in the same manner as a district regulation limiting the issuance of air contaminants. This subdivision shall not apply to any district that has adopted a rule or regulation regarding aerosol paints pursuant to an order of a federal court, until the federal court has authorized the district to observe and enforce the state board regulation in lieu of the district regulation.

(2) The state board shall adopt regulations requiring the maximum feasible reduction in volatile organic compounds emitted from the use of aerosol paints. The regulations shall establish final limits and require full compliance, and shall establish interim limits prior to that date resulting in reductions in reactive organic compounds.

(3) The state board shall conduct a public hearing on the technological or commercial feasibility of achieving full compliance with the final limits. If the state board determines that a 60-percent reduction in emissions of reactive organic compounds from the use of aerosol paints is not technologically or commercially feasible, the state board may grant an extension of time not to exceed five years. During any extension of time, the most stringent interim limits shall be applicable. Any regulation adopted by the state board shall include a provision authorizing the time extension and requiring a public hearing on technological or commercial feasibility consistent with this subdivision. The state board shall seek to ensure that the final limits for aerosol paints established pursuant to this subdivision do not become federally enforceable prior to the effective date established by the state board for these limits, including any extension granted under this subdivision.

(4) Reductions required for aerosol paints under this subdivision are not intended to apply to any other consumer product.

(j) The state board shall not adopt a regulation pertaining to disinfectants any sooner than December 1, 2003.

(k) The state board shall comply with its volatile organic compound emission reduction obligations under the 1994 State Implementation Plan, or any amendments thereto, and shall ensure that there is no loss of emission reductions as a result of its compliance with subdivision (j).

SEC. 18. Section 41865 of the Health and Safety Code, as amended by Chapter 225 of the Statutes of 2004, is amended to read:

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:



(1) “Sacramento Valley Air Basin” means the area designated by the state board pursuant to Section 39606.

(2) “Air pollution control council” means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) “Conditional rice straw burning permit” means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) “Allowable acres to be burned” means the number of acres that may be burned pursuant to subdivision (c).

(5) “Department” means the Department of Food and Agriculture.

(6) “Maximum fall burn acres” means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) “Maximum spring burn acres” means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice

growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:



(A) The total of 25 percent of each individual applicant's planted acres that year.

(B) A total of 125,000 acres planted in the Sacramento Valley Air Basin.

(2) Each grower shall be eligible to burn up to 25 percent of the grower's planted acres, as determined by the air pollution control officers in the Sacramento Valley Air Basin and subject to the maximum annual number of acres burned set forth in paragraph (1), if the grower has met the criteria for a conditional rice straw burning permit.

(3) The air pollution control council shall annually determine which is the lesser of subparagraphs (A) and (B) of paragraph (1), and shall determine the maximum percentage applicable to all growers subject to the conditions set forth in subdivisions (f) and (h).

(4) A grower who owns or operates 400 acres or less who has met the criteria for the issuance of a conditional rice straw burning permit may burn his or her entire acreage once every four years, provided that the limit prescribed in paragraph (1) is not exceeded.

(5) Nothing in this subdivision shall permit an applicant to transfer, sell, or trade any permission to burn granted pursuant to this subdivision to another applicant or individual.

(j) The state board and the department shall jointly determine if the allowable acres to be burned, as provided in subdivisions (c), (f), and (h), may be exceeded due to extraordinary circumstances, such as an act of God, that have an impact over a continuing duration and make alternatives other than burning unusable.

(k) "Administrative burning" means burning of vegetative materials along roads, in ditches, and on levees adjacent to or within a rice field, or the burning of vegetative materials on rice research facilities authorized by the county agricultural commissioner, not to exceed 2,000 acres. Administrative burning conducted in accordance with Section 41852 is not subject to this section.

(l) (1) On or before September 1, 1992, the state board and the department shall jointly establish an advisory committee composed of 10 members to assist with the identification and implementation of alternatives to rice straw burning. Members of the committee shall be from the Sacramento Valley Air Basin, and the committee shall consist of two rice growers, two representatives from the environmental community, two health officials, two county supervisors or their designees, one member from the air pollution control council, and one member from the business community with expertise in market or product development. The committee shall meet at least annually. General Fund moneys shall not be used to support the committee.



(2) The committee shall develop a list of priority goals for the development of alternative uses of rice straw for the purpose of developing feasible and cost-effective alternatives to rice straw burning. These goals shall include, but not be limited to, research on alternatives, economic incentives to encourage alternative uses, and new product development.

(m) On or before September 1, 1998, the state board, in consultation with the department, and the advisory committee, shall develop an implementation plan and a schedule to achieve diversion of not less than 50 percent of rice straw produced toward off-field uses by 2000. Off-field uses may include, but are not limited to, the production of energy and fuels, construction materials, pulp and paper, and livestock feed.

(n) The Legislature hereby finds and declares as follows:

(1) Because of the requirements imposed by this section, rice straw that was previously burned may present, as solid waste, a new disposal problem.

(2) The state should assist local governments and growers in diverting rice straw from landfills by researching and developing diversion options.

(o) It is the intent of the Legislature that all feasible alternatives to rice straw burning and options for diverting rice straw from landfills be encouraged.

(p) This subdivision confirms that reductions in emissions from rice straw burning qualify for air quality offsets, in accordance with paragraphs (1) and (2).

(1) These credits shall meet the requirements specified in state law and district rules and regulations, and shall comply with applicable district banking rules established pursuant to Sections 40709 to 40713, inclusive. Districts are urged to establish banking systems in accordance with Sections 40709 to 40713, inclusive. The state board may adopt regulations to implement this subdivision, including, but not limited to, consideration of the seasonal and intermittent nature of rice straw burning emissions. In developing the regulations, the state board shall consult with all concerned parties. However, emission reduction credits that would otherwise accrue from reductions in emissions from rice straw burning shall not be affected or negated by the phasedown of burning, as specified in subdivision (c).

(2) Reductions in emissions achieved in compliance with subdivision (c) that are banked or used as credits shall not be credited for purposes of attainment planning and progress towards the attainment of any state or national ambient air quality standard as required by state and federal law.



(q) (1) Any person who negligently or intentionally violates any provision of this article is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment in the county jail for not more than nine months, or by both that fine and imprisonment. This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(2) Any person who negligently or intentionally violates any provision in this article is liable for a civil penalty of not more than ten thousand dollars (\$10,000). This subdivision applies only to agricultural burning in the Sacramento Valley Air Basin.

(r) Districts in the Sacramento Valley Air Basin shall impose fees on growers to cover the cost of implementing this section pursuant to Section 42311.

(s) To the extent that resources are available, the state board and the agencies with jurisdiction over air quality within the Sacramento Valley Air Basin shall do both of the following:

(1) Improve responses to citizen complaints, and, to the extent feasible, immediately investigate and analyze smoke complaints from the public to identify factors that contribute to complaints and to develop better smoke control measures to be included in the agricultural burning plan, keep a record of all complaints, coordinate among other agencies on citizens' complaints, and investigate the source of the pollution causing the complaint.

(2) Respond more quickly to requests for update from county air pollution control officers to help maximize burning days when meteorological conditions are best suited for smoke dispersion.

SEC. 19. Section 43032 of the Health and Safety Code is repealed.

SEC. 20. Section 43101 of the Health and Safety Code is amended to read:

43101. (a) The state board shall adopt and implement emission standards for new motor vehicles for the control of emissions from new motor vehicles that the state board finds to be necessary and technologically feasible to carry out the purposes of this division. Before adopting these standards, the state board shall consider the impact of these standards on the economy of the state, including, but not limited to, their effect on motor vehicle fuel efficiency.

(b) The standards adopted pursuant to this section may be applicable to motor vehicle engines, rather than to motor vehicles.

SEC. 21. Section 44011.6 of the Health and Safety Code is amended to read:

44011.6. (a) The use of a heavy-duty motor vehicle that emits excessive smoke is prohibited.



(b) (1) As expeditiously as possible, the state board shall develop a test procedure for the detection of excessive smoke emissions from heavy-duty diesel motor vehicles that is feasible for use in an intermittent roadside inspection program. During the development of the test procedure, the state board shall cooperate with the Department of the California Highway Patrol in conducting roadside inspections.

(2) The state board may also specify visual or functional inspection procedures to determine the presence of tampering or defective emissions control systems in heavy-duty diesel or heavy-duty gasoline motor vehicles. However, visual or functional inspection procedures for heavy-duty gasoline motor vehicles shall not be more stringent than those prescribed for heavy-duty gasoline motor vehicles subject to biennial inspection pursuant to Section 44013.

(3) The chairperson of the state board shall appoint an ad hoc advisory committee that shall include, but not be limited to, representatives of heavy-duty engine manufacturers, carriers of property for compensation using heavy-duty gasoline or heavy-duty diesel motor vehicles, and the Department of the California Highway Patrol. The advisory committee shall cooperate with the state board to develop a test procedure pursuant to this subdivision and shall advise the state board in developing regulations to implement test procedures and inspection of heavy-duty commercial motor vehicles.

(c) Any smoke testing procedures or smoke measuring equipment, including any meter that measures smoke opacity or density and any recorder that stores or records smoke opacity or density measurements, used to test for compliance with this section and regulations adopted pursuant to this section, shall produce consistent and repeatable results. The requirements of this subdivision shall be satisfied by the adoption of Society of Automotive Engineers recommended practice J 1667, “Snap-Acceleration Smoke Test Procedures for Heavy-Duty Diesel Powered Vehicles.”

(d) (1) The smoke test standards and procedures adopted and implemented pursuant to this section shall be designed to ensure that no engine will fail the smoke test standards and procedures when the engine is in good operating condition and is adjusted to the manufacturer’s specifications.

(2) In implementing this section, the state board shall adopt regulations that ensure that there will be no false failures or that ensure that the state board will remedy any false failures without any penalty to the vehicle owner.

(e) The state board shall enforce the prohibition against the use of heavy-duty motor vehicles that are determined to have excessive smoke emissions and shall enforce any regulation prohibiting the use of a



heavy-duty motor vehicle determined to have other emissions-related defects, using the test procedure established pursuant to this section.

(f) The state board may issue a citation to the owner or operator for any vehicle in violation of this section. The regulations may require the operator of a vehicle to submit to a test procedure adopted pursuant to subdivision (b) and this subdivision, and may specify that refusal to so submit is an admission constituting proof of a violation, and shall require that, when a citation has been issued, the owner of a vehicle in violation of the regulations shall, within 45 days, correct every deficiency specified in the citation.

(g) The department may develop criteria for one or more classes of smog check stations capable of determining compliance with regulations adopted pursuant to this section and may authorize those stations to issue certificates of compliance to vehicles in compliance with the regulations. The department may contract for the operation of smog check stations for heavy-duty motor vehicles pursuant to this subdivision, and only heavy-duty motor vehicles may be inspected at those stations.

(h) In addition to the corrective action required by this section, the owner of a motor vehicle in violation of this section is subject to a civil penalty of not more than one thousand five hundred dollars (\$1,500) per day for each day that the vehicle is in violation. The state board may adopt a schedule of reduced civil penalties to be applied in cases where violations are corrected in an expeditious manner. However, the schedule of reduced civil penalties shall not apply where there have been repeated incidents of emissions control system tampering. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Vehicle Inspection and Repair Fund. Funds in the Vehicle Inspection and Repair Fund, when appropriated by the Legislature, shall be available to the state board and the Department of the California Highway Patrol for the conduct of intermittent roadside inspections of heavy-duty motor vehicles pursuant to this section.

(i) Following the adoption of regulations pursuant to this section, the state board may commence inspecting heavy-duty motor vehicles. With the concurrence of the Department of the California Highway Patrol, these inspections may be conducted in conjunction with the safety and weight enforcement activities of the Department of the California Highway Patrol, or at other locations selected by the state board or the Department of the California Highway Patrol. Inspection locations may include private facilities where fleet vehicles are serviced or maintained. The state board and the Department of the California Highway Patrol may conduct these inspections either cooperatively or independently,



and the state board may contract for assistance in the conduct of these inspections.

(j) The state board shall inform the Department of the California Highway Patrol whenever a vehicle owner cited pursuant to this section fails to take a required corrective action or to pay a civil penalty levied pursuant to subdivisions (h) and (k) in a timely manner. Following notice and opportunity for an administrative hearing pursuant to subdivision (n), the state board may request the Department of the California Highway Patrol to remove the vehicle from service and order the vehicle to be stored. Upon notification from the state board of payment of any civil penalties imposed under subdivision (h) and storage and related charges, the vehicle shall be released to the owner or designee. Upon release of the vehicle, the owner or designee shall correct every deficiency specified in any citation to that owner with respect to the vehicle.

(k) In addition to the corrective action required by subdivision (f), and in addition to the civil penalty imposed by subdivision (h), the owner of a motor vehicle cited by the state board pursuant to this section shall pay a civil penalty of three hundred dollars (\$300) per citation; except that this penalty shall not apply to the first citation for any schoolbus. All civil penalties imposed pursuant to this subdivision shall be collected by the state board and deposited in the Diesel Emission Reduction Fund, which fund is hereby created. Funds in the Diesel Emission Reduction Fund, when appropriated by the Legislature, shall be available to the State Energy Resources Conservation and Development Commission for research, development, and demonstration programs undertaken pursuant to Section 25617 of the Public Resources Code.

(l) The state board shall adopt regulations that afford an owner cited under this section an opportunity for an administrative hearing consistent with, but not limited to, all of the following: (1) any owner cited under this section may request an administrative hearing within 45 days following either personal receipt or certified mail receipt of the citation; (2) if the owner fails to request an administrative hearing within 45 days, the citation shall be deemed a final order and not subject to review by any court or agency; (3) if the owner requests an administrative hearing and fails to seek review by administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure within 60 days after the mailing of the administrative hearing decision, the decision shall be deemed a final order and not subject to review by any other court or agency; and (4) the 45-day period may be extended by the administrative hearing officer for good cause.

(m) Following exhaustion of the review procedures provided for in subdivision (l), the state board may apply to the Superior Court of



Sacramento County for a judgment in the amount of the civil penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

SEC. 22. Section 44100 of the Health and Safety Code is amended to read:

44100. The Legislature hereby finds and declares as follows:

(a) Emission reduction programs based on market principles have the potential to provide equivalent or superior environmental benefits when compared to existing controls at a lower cost to the citizens of California than traditional emission control requirements.

(b) Several studies have demonstrated that a small percentage of light-duty vehicles contribute disproportionately to the on-road emissions inventory. Programs to reduce or eliminate these excess emissions can significantly contribute to the attainment of the state's air quality goals.

(c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new motor vehicle standards by bringing more low-emission vehicles into the on-road fleet earlier.

(d) The California State Implementation Plan for Ozone (SIP), adopted November 15, 1994, and submitted to the Environmental Protection Agency, calls for added reductions in reactive organic gases (ROG) and oxides of nitrogen (NO_x) from light-duty vehicles by the year 2010. One of the more market-oriented approaches reflected in the SIP, known as the M-1 strategy, calls for accelerating the retirement of older light-duty vehicles in the South Coast Air Quality Management District to achieve the following emission reductions:

Year	Emissions, TPD (tons per day) (ROG + NO _x)
1999	9
2002	14
2005	20
2007	22
2010	25

(e) A program for achieving those and more emission reductions should be based on the following principles:

(1) If the program receives adequate funding, the first two years should include a thorough assessment of the costs and short-term and long-term emission reduction benefits of the program, compared with other emission reduction programs for light-duty vehicles, which shall be reflected in a report and recommendations by the state board to the

Governor and the Legislature on strategies and funding needs for meeting the emission reduction requirements of the M-1 strategy of the 1994 SIP for the years 1999 to 2010, inclusive.

(2) The program should first contribute to the achievement of the emission reductions required by the inspection and maintenance program and the M-1 strategy of the 1994 SIP, and should permit the use of mobile source emission reduction credits for other purposes currently authorized by the state board or a district. Remaining credits may be used to achieve other emission reductions, including those required by the 1994 SIP, in a manner consistent with market-based strategies. Emission credits shall not be used to offset emission standards or other requirements for new vehicles, except as authorized by the state board.

(3) Participation by the vehicle owner shall be entirely voluntary and the program design should be sensitive to the concerns of car collectors and to consumers for whom older vehicles provide affordable transportation.

(4) The program design shall provide for real, surplus, and quantifiable emission reductions, based on an evaluation of the purchased vehicles, taking into account factors that include per-mile emissions, annual miles driven, remaining useful life of retired vehicles, and emissions of the typical or average replacement vehicle, as determined by the state board. The program shall ensure that there is no double counting of emission credits among the various vehicle removal programs.

(5) The program should specify the emission reductions required and then utilize the market to ensure that these reductions are obtained at the lowest cost.

(6) The program should be privately operated. It should utilize the experience and expertise gained from past successful programs. Existing entities that are authorized by, contracted with, or otherwise sanctioned by a district and approved by the state board and the United States Environmental Protection Agency shall be fully utilized for purposes of implementing this article. Nothing in this paragraph restricts the Department of Consumer Affairs from selecting qualified contractors to operate or administer any program specified pursuant to this chapter.

(7) The program should be designed insofar as possible to eliminate any benefit to any participants from vehicle tampering and other forms of cheating. To the extent that tampering and other forms of cheating might be advantageous, the program design shall include provisions for monitoring the occurrence of tampering and other forms of cheating.

(8) Emission credits should be expressed in pounds or other units, and their value should be set by the marketplace. Any contract between a public entity and a private party for the purchase of emission credits



should be based on a price per pound which reflects the market value of the credit at its time of purchase. Emission reductions required by the M-1 and other strategies of the 1994 SIP shall be accomplished by competitive bid among private businesses solicited by the oversight agency designated pursuant to Section 44105.

SEC. 23. Section 44104.5 of the Health and Safety Code is amended to read:

44104.5. (a) The regulations adopted pursuant to subdivision (a) of Section 44101 shall include a plan to guide the execution of the first two years of the program, to assess the results, and to formulate recommendations. The plan shall also verify whether the light-duty vehicle scrapping program included in the state implementation plan adopted on November 15, 1994, can reasonably be expected to yield the required emissions reductions at reasonable cost-effectiveness. Scrapping of any vehicles under this program for program development or testing or for generating emission reductions to be credited against the M-1 strategy of the 1994 SIP may proceed before the state board adopts the regulations pursuant to subdivision (a) of Section 44101 or the plan required by this subdivision. The emission credits assigned to these vehicles shall be adjusted as necessary to ensure that those credits are consistent with the credits allowed under the regulations adopted pursuant to Section 44101. The plan shall include a baseline study, for the geographical area or areas representative of those to be targeted by this program and by measure M-1 in the SIP, of the current population of vehicles by model year and market value and the current turnover rate of vehicles, and other factors that may be essential to assessing program effectiveness, cost-effectiveness, and market impacts of the program.

(b) At the end of each of the two calendar years after the adoption of the program plan, if the program receives adequate funding, the state board, in consultation with the department, shall adopt and publish a progress report evaluating each year of the program. These reports shall address the following topics for those vehicles scrapped to achieve both the M-1 SIP objectives and those vehicles scrapped or repaired to generate mobile-source emission reduction credits used for other purposes:

- (1) The number of vehicles scrapped or repaired by model year.
- (2) The measured emissions of the scrapped or repaired vehicles tested during the report period, using suitable inspection and maintenance test procedures.
- (3) Costs of the vehicles in terms of amounts paid to sellers, the costs of repair, and the cost-effectiveness of scrapping and repair expressed in dollars per ton of emissions reduced.
- (4) Administrative and testing costs for the program.

(5) Assessments of the replacement vehicles or replacement travel by model year or emission levels, as determined from interviews, questionnaires, diaries, analyses of vehicle registrations in the study region, or other methods as appropriate.

(6) Assessments of the net emission benefits of scrapping in the year reported, considering the scrapped vehicles, the replacement vehicles, the effectiveness of repair, and other effects of the program on the mix of vehicles and use of vehicles in the geographic area of the program, including in-migration of other vehicles into the area and any tendencies to increased market value of used vehicles and prolonged useful life of existing vehicles, if any.

(7) Assessments of whether the M-1 strategy of the 1994 SIP can reasonably be expected to yield the required emission reductions.

(c) Not later than June 30, 1999, and every three years thereafter, if the programs receive adequate funding, the state board, in consultation with the department, shall evaluate the performance of the programs specified in Article 9 (commencing with Section 44090) and this article and, based on that evaluation, report to the Governor and Legislature. The report shall evaluate the overall performance of the program, including its cost-effectiveness in terms of dollars per ton of credited or reduced emissions, description of the methods and procedures to assure that the emission reductions are real, surplus, and quantifiable, the extent of the market for eligible vehicles, a recommendation for an appropriate allocation of expenditures between removal or repair of vehicles that reflects the relative cost-effectiveness of the options, and any other recommendation for improving the effectiveness of these programs. This report shall also contain all of the following:

(1) Identification of procedures for distinguishing the emission reductions attributed to scrapping for the purpose of generating emission reductions credits and scrapping that occurs or would have occurred as a result of the inspection and maintenance program managed by the Department of Consumer Affairs and other programs.

(2) A projection of the emissions reductions and cost-effectiveness that might be realized by scrapping or repairing light-duty vehicles through the year 2010, considering changes expected in the vehicle fleet and likely impacts of scrapping or repair on the mix and emissions of vehicles.

(3) A comparison of the effectiveness of scrappage, repair, or upgrade to other programs for light-duty vehicles.

(4) A recommended scrapping program, or other more cost-effective means, for continuing to achieve the emissions reductions required by the M-1 strategy of the 1994 State Implementation Plan, considering likely emission reductions in the attainment year costs,

cost-effectiveness, issues of monitoring and verification, and status of the Environmental Protection Agency's approval of the state's 1994 SIP.

SEC. 24. Section 57007 of the Health and Safety Code is amended to read:

57007. (a) The agency, and the offices, boards, and departments within the agency, shall institute quality government programs to achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs that implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decisionmaking and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(b) The agency, and each board, department, and office within the agency, shall submit a biennial report to the Governor and Legislature, no later than December 1 with respect to the previous two fiscal years, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, "quality government program" means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

SEC. 25. Section 59019 of the Health and Safety Code is repealed.

SEC. 26. Section 115910 of the Health and Safety Code is amended to read:

115910. (a) On or before the 15th day of each month, each health officer shall submit to the board a survey documenting all beach postings



and closures resulting from implementation of Section 115915 that occurred during the preceding month. The survey shall, at a minimum, include the following information:

(1) Identification of the beaches in each county subject to testing conducted pursuant to Section 115885 and the amount and types of monitoring conducted at each beach.

(2) Identification of the geographic location, areal extent, and type of action taken for each incident of posting or closure conducted pursuant to Section 115915. Geographic location and areal extent shall be noted in sufficient detail to determine on a common map, or by latitude and longitude, the approximate boundaries of the affected beaches.

(3) Identification of the standards exceeded and the causes and sources of the pollution, if known. Exceeded standards shall be identified with sufficient particularity to determine which types of tests and biological indicators were used to determine that an exceeded standard exists. Causes of pollution shall be identified with sufficient particularity to determine what substances, in addition to any water carrying the substances, were responsible for the exceeded standard. Sources shall be identified with sufficient particularity to determine the most specific geographical origin of the pollution sources available to the health officer at the time of the posting or closure.

(b) Surveys conducted pursuant to subdivision (a) shall be in a specific format established by the board on or before February 1, 2001. The board shall make the format easily accessible to the health officer through means that will enable the health officer to most effectively carry out the requirements of this section and enable the board to develop consistent, statewide data concerning the effect and status of beach postings and closures in a particular calendar year.

(c) On or before the 30th day of each month, the board shall make available to the public the information provided by the health officers. Based upon the data provided pursuant to subdivision (a), the report shall, at a minimum, include the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known.

(d) The board shall continuously post and update on its Web site, but at a minimum, annually on or before July 30, information documenting the beach posting and closure data provided to the board by the health officers including the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known.

SEC. 27. Section 14315 of the Penal Code is amended to read:

14315. Not later than 36 months after the date when this title may be implemented, as specified in Section 14314, the secretary shall post



on the agency's Web site, updated no later than July 1, annually, a description of the operation and accomplishments of the training programs and the environmental enforcement and prosecution projects funded by this title. The commission shall prepare the section of the report pertaining to the course of instruction authorized in Section 14304 and submit it to the secretary for inclusion in the report.

SEC. 28. Section 42885.5 of the Public Resources Code is amended to read:

42885.5. (a) The board shall adopt a five-year plan, which shall be updated every two years, to establish goals and priorities for the waste tire program and each program element.

(b) On or before July 1, 2001, and every two years thereafter, the board shall submit the adopted five-year plan to the appropriate policy and fiscal committees of the Legislature. The board shall include, in the plan, programmatic and fiscal issues including, but not limited to, the hierarchy used by the board to maximize productive uses of waste and used tires and the performance objectives and measurement criteria used by the board to evaluate the success of its waste and used tire recycling program. Additionally, the plan shall describe each program element's effectiveness, based upon performance measures developed by the board, including, but not limited to, the following:

(1) Enforcement and regulations relating to the storage of waste and used tires.

(2) Cleanup, abatement, or other remedial action related to waste tire stockpiles throughout the state.

(3) Research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(4) Market development and new technology activities for used tires and waste tires.

(5) The waste and used tire hauler program and manifest system.

(6) A description of the grants, loans, contracts, and other expenditures proposed to be made by the board under the tire recycling program.

(7) Until June 30, 2006, the grant program authorized under Section 42872.5 to encourage the use of rubberized asphalt concrete technology in public works projects.

(c) The board shall base the budget for the California Tire Recycling Act and program funding on the plan.

(d) The plan may not propose financial or other support that promotes, or provides for research for the incineration of tires.

SEC. 29. Section 42889.1 of the Public Resources Code is repealed.

SEC. 30. Section 42889.4 of the Public Resources Code is amended to read:



42889.4. If facilities are permitted to burn tires in the previous calendar year, the State Air Resources Board, in conjunction with air pollution control districts and air quality management districts, shall post on its Web site, updated on or before July 1 of the subsequent year, information summarizing the types and quantities of air emissions, if any, from those facilities.

SEC. 31. Chapter 4 (commencing with Section 71069) is added to Part 2 of Division 34 of the Public Resources Code, to read:

CHAPTER 4. REPORT AND INFORMATION MANAGEMENT

71069. The Legislature finds and declares the following:

(a) It is the policy of the state to conserve and protect its natural resources.

(b) Over 1,400 reports are submitted annually to the Legislature and the Governor, costing up to ten thousand dollars (\$10,000) per report for printing and distribution.

(c) The California Environmental Protection Agency has historically submitted over 60 reports annually to the Legislature and the Governor. The agency's boards, departments, and offices submit over 300 additional reports and studies, not including the hundreds of guidance documents, fact sheets and other printed materials produced.

(d) Submitting reports to the Legislature and Governor electronically, by compact disc, and posting the reports on state agency Web sites would greatly improve economic efficiency and environmental sustainability through minimized consumption of paper and printing materials, while reducing the economic and environmental costs associated with the production, distribution, and storage of printed reports.

(e) Access to the World Wide Web is continually expanding for the private sector and the general public. Providing reports electronically on state agency Web sites would grant greater accessibility to these reports and allow for greater sharing of knowledge and data with Californians and other information seekers. In some instances, a printed copy of a report is necessary. In those instances, economic efficiency and environmental sustainability can still be realized through various resource conservation efforts.

(f) Current law mandates state agencies to purchase recycled content products and materials, including printing and writing paper. There are also proven techniques and materials that are environmentally and economically preferable, and are widely available for use of all document production.

71069.5. For purposes of this chapter "board" means the California Integrated Waste Management Board.



71070. (a) On or before January 1, 2005, the board, in consultation with the state agencies affected by the changes made by the act of the 2003–04 Regular Session of the Legislature adding this chapter, shall develop and implement guidelines, to provide and produce reports and other documentation, including guidance documents, fact sheets, and other publications and written materials, in the most efficient and environmentally sustainable manner possible.

(b) The guidelines shall include all of the following:

(1) Distribution of reports and other documentation by electronic means and compact discs.

(2) Information on posting reports and other documentation on state agency Web sites.

(3) Techniques for the production of reports and other documentation that will reduce waste and encourage the use of recycled goods, materials, and supplies.

(4) The cost reduction options specified in Section 7550.1 of the Government Code.

(5) Distribution of a reasonable number of printed reports to ensure public access.

(c) On or before February 1, 2005, the board shall distribute the guidelines to each state agency.

71071. (a) On and after February 1, 2005, the California Environmental Protection Agency and its boards, departments, and offices shall provide and produce reports and other documentation pursuant to the guidelines established in Section 71070.

(b) On and after June 1, 2005, all state agencies not otherwise subject to subdivision (a) shall provide and produce reports and other documentation pursuant to the guidelines established in Section 71070.

71073. On or before April 30, 2005, each state agency shall conduct a thorough review of each report that the state agency is required to submit to the Legislature. During this review, the state agency shall identify whether the report is a completed one-time report, an obsolete report, or a duplicative report that can be eliminated or modified.

71074. Any reporting requirements imposed by this chapter do not supersede a reporting requirement in any other provision of law.

SEC. 32. Section 7672 of the Public Utilities Code is amended to read:

7672. For purposes of this article, “hazardous material” means either of the following:

(a) A hazardous material, as defined in Section 171.8 of Title 49 of the Code of Federal Regulations.

(b) A hazardous material, as defined in Section 25501 of the Health and Safety Code.



SEC. 33. Section 7711 of the Public Utilities Code is amended to read:

7711. On or before July 1, 1992, and on or before July 1 annually thereafter, the commission shall report to the Legislature on sites on railroad lines in the state it finds to be hazardous. The report shall include, but not be limited to, information on all of the following:

(a) A list of all railroad derailment accident sites in the state on which accidents have occurred within at least the previous five years. The list shall describe the nature and probable causes of the accidents, if known, and shall indicate whether the accidents occurred at or near sites that the commission, pursuant to subdivision (b), has determined pose a local safety hazard.

(b) A list of all railroad sites in the state that the commission, pursuant to Section 20106 of Title 49 of the United States Code, determines pose a local safety hazard. The commission may submit in the annual report the list of railroad sites submitted in the immediate prior year annual report, and may amend or revise that list from the immediate prior year as necessary. Factors that the commission shall consider in determining a local safety hazard may include, but need not be limited to, all of the following:

- (1) The severity of grade and curve of track.
- (2) The value of special skills of train operators in negotiating the particular segment of railroad line.
- (3) The value of special railroad equipment in negotiating the particular segment of railroad line.
- (4) The types of commodities transported on or near the particular segment of railroad line.
- (5) The hazard posed by the release of the commodity into the environment.
- (6) The value of special railroad equipment in the process of safely loading, transporting, storing, or unloading potentially hazardous commodities.
- (7) The proximity of railroad activity to human activity or sensitive environmental areas.

(c) In determining which railroad sites pose a local safety hazard pursuant to subdivision (b), the commission shall consider the history of accidents at or near the sites. The commission shall not limit its determination to sites at which accidents have already occurred, but shall identify potentially hazardous sites based on the criteria enumerated in subdivision (b) and all other criteria that the commission determines influence railroad safety. The commission shall also consider whether any local safety hazards at railroad sites have been eliminated or



sufficiently remediated to warrant removal of the site from the list required under subdivision (b).

SEC. 34. Section 7712 of the Public Utilities Code is amended to read:

7712. On or before January 1, 1993, the commission shall adopt regulations, based on its findings and not inconsistent with federal law. The commission may amend or revise the regulations as necessary thereafter, to reduce the potential railroad hazards identified in Section 7711. In adopting the regulations, the commission shall consider at least all of the following:

(a) Establishing special railroad equipment standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

- (1) Sizes, numbers, and configurations of locomotives.
- (2) Brakes.

(b) Establishing special train operating standards for trains operated over railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

- (1) Length, weight, and weight distribution of trains.
- (2) Speeds and accelerations of trains.
- (3) Hours of allowable travel.

(c) Establishing special training, personnel, and performance standards for operators of trains that travel on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711.

(d) Establishing special inspection and reporting standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711.

SEC. 35. Section 10782 of the Water Code is repealed.

SEC. 36. Section 13191 of the Water Code is amended to read:

13191. The state board shall convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)), and applicable federal regulations and monitoring and assessment programs. The advisory group or groups shall be comprised of persons concerned with the requirements of Section 303(d) of the Clean Water Act. The state board shall provide public notice on its website of any meetings of the advisory group or groups and, upon the request of any party shall mail notice of the time and location of any meeting of the group or groups. The board shall also ensure that the advisory group or groups meet in a manner that



facilitates the effective participation of the public and the stakeholder participants.

SEC. 37. Section 13192 of the Water Code is repealed.

SEC. 38. Section 13198 of the Water Code is repealed.

SEC. 39. Section 13292 of the Water Code is amended to read:

13292. (a) It is the responsibility of the state board to provide guidance to the regional boards in matters of procedure, as well as policy and regulation. In order to ensure that regional boards are providing fair, timely, and equal access to all participants in regional board proceedings, the state board shall undertake a review of the regional boards' public participation procedures. As part of the review process, and upon request by the state board, the regional boards shall solicit comments from participants in their proceedings. Upon completion of the review, the state board shall report to the Legislature regarding its findings and include recommendations to improve regional board public participation processes.

(b) (1) The state board shall provide annual training to regional board members to improve public participation procedures at the regional level.

(2) Paragraph (1) shall be implemented only during fiscal years for which funding is provided for the purposes of that paragraph in the annual Budget Act or in another statute.

SEC. 40. Section 13369 of the Water Code is amended to read:

13369. (a) (1) The state board, in consultation with the regional boards, the California Coastal Commission, and other appropriate state agencies and advisory groups, as necessary, shall prepare a detailed program for the purpose of implementing the state's nonpoint source management plan. The board shall address all applicable provisions of the Clean Water Act, including Section 319 (33 U.S.C. Sec. 1329), as well as Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), and this division in the preparation of this detailed implementation program.

(2) (A) The program shall include all of the following components:

(i) Nonregulatory implementation of best management practices.

(ii) Regulatory-based incentives for best management practices.

(iii) The adoption and enforcement of waste discharge requirements that will require the implementation of best management practices.

(B) In connection with its duties under this subdivision to prepare and implement the state's nonpoint source management plan, the state board shall develop, on or before February 1, 2001, guidance to be used by the state board and the regional boards for the purpose of describing the process by which the state board and the regional boards will enforce the state's nonpoint source management plan, pursuant to this division.



(C) The adoption of the guidance developed pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The state board, in consultation with the California Coastal Commission and other appropriate agencies, as necessary, on or before December 31 of each year, shall submit to the Legislature, and make available to the public, both of the following:

(1) Copies of all state and regional board reports that contain information related to nonpoint source pollution and that the state or regional boards were required to prepare in the previous fiscal year pursuant to Sections 303, 305(b), and 319 of the Clean Water Act (33 U.S.C. Secs. 1313, 1315(b), and 1329), Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), related regulations, and this division.

(2) A summary of information related to nonpoint source pollution that is set forth in the reports described pursuant to paragraph (1) including, but not limited to, summaries of both of the following:

(A) Information that is related to nonpoint source pollution and that is required to be included in reports prepared pursuant to Section 305(b) of the Clean Water Act (33 U.S.C. 1315(b)).

(B) Information that is required to be in reports prepared pursuant to Section 319(h)(11) of the Clean Water Act (33 U.S.C. Sec. 1329(h)(11)).

SEC. 41. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.



(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one



effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.



(D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(2) For the purposes of this section, a “period of six consecutive months” means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.



(ii) For the purposes of this section, “wastewater treatment unit” means a component of a wastewater treatment plant that performs a designated treatment function.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress towards compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule



order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:



(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length, except that the time schedule may not exceed 10 years in length for the upgrade described in subparagraph (B)(iv)(III). If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount towards the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.

(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

(l) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement

policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys’ fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall continuously report and update information on its Web site, but at a minimum, annually on or before January 1, regarding its enforcement activities. The information shall include all of the following:



(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, including stormwater enforcement violations.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation, including stormwater enforcement actions.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

SEC. 42. Section 13399.39 of the Water Code is repealed.

SEC. 43. Section 4 of Chapter 435 of the Statutes of 1994 is amended to read:

Sec. 4. The Department of Toxic Substances Control shall provide information on its Web site biennially on its progress in implementing the pilot program established by Chapter 6.85 (commencing with Section 25396) of Division 20 of the Health and Safety Code, as added by Section 2 of this act. The information shall describe the activities which the department has taken during the past two years in implementing the pilot program, list the sites that have been selected for response action and the sites that have been issued a certificate of completion under the program, evaluate its effectiveness in expediting the cleanup of selected sites, and compare its effectiveness with that of the voluntary cleanup “walk-in” program that the department administers pursuant to Chapter 6.5 (commencing with Section 25100) of, and Chapter 6.8 (commencing with Section 25300) of, Division 20 of the Health and Safety Code.

